Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-2051

THE CITY OF APOPKA, FLORIDA, JOHN H. LAND, Mayor of Apopka, ALONZO WILLIAMS, JR., RICHARD MARK, BILL ARROWSMITH, JEANETTE ROBINSON, Councilmen of Apopka, Florida, their successors and agents, in their individual and official capacities,

*Petitioners,*

vs.

FAITHY DOWDELL, JOHNNIE MAE SUBBS, BERNICE HENDERSON, BOBBY ANN BARNES, ADDIE SWAIN, MARY BOYKIN, MARY WATSON, WILLIE L. NELSON, EDDIE LEE WYNN, LAFAYETTE DOWDELL, JOHNNIE H. BRIDGES, FREDDIE L. HOWARD, on behalf of themselves and others similarly situated,

*Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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*Of Counsel*

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

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No. _____

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THE CITY OF APOPKA, FLORIDA, JOHN H. LAND, Mayor of Apopka, ALONZO WILLIAMS, JR., RICHARD MARK, BILL ARROWSMITH, JEANETTE ROBINSON, Councilmen of Apopka, Florida, their successors and agents, in their individual and official capacities,

*Petitioners,*

vs.

FAITHY DOWDELL, JOHNNIE MAE SUBBS, BERNICE HENDERSON, BOBBY ANN BARNES, ADDIE SWAIN, MARY BOYKIN, MARY WATSON, WILLIE L. NELSON, EDDIE LEE WYNN, LAFAYETTE DOWDELL, JOHNNIE H. BRIDGES, FREDDIE L. HOWARD, on behalf of themselves and others similarly situated,

*Respondents.*

---

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners respectfully pray that a writ of certiorari be issued to review the opinions and orders of the United States Court of Appeals for the Fifth

Circuit entered in this proceeding on March 24, 1980 (Appendix A), and May 1, 1980 (Appendix B).

## OPINIONS BELOW

The opinions of the Court of Appeals and the District Court have not been published. These opinions appear at Appendices A, B, and D.

## JURISDICTION

This is a petition to review the decision of the Court of Appeals for the Fifth Circuit in the case of *In Re the City of Apopka, Florida, et al.* No. 80-5131, rendered on March 24, 1980 (Appendix A). Petitioners' motion for rehearing was denied on May 1, 1980 (Appendix B). The jurisdiction of this Court to review the above-mentioned

decisions by writ of certiorari is invoked under the provisions of 28 U.S.C. §1254(1).

## QUESTION PRESENTED

Whether defendants, in a civil rights action brought pursuant to 31 U.S.C. §1244, and 42 U.S.C. §§1981, 1983, 1988, 2000a, et seq., and 2000d, in which plaintiffs seek affirmative monetary remedial relief, in the form of municipal spending under court order, so as to correct alleged past racial discrimination, are entitled to trial by jury upon timely demand therefor.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. 7; Title 31 U.S.C. §1242(a)(1) [31 U.S.C.S. §1242(a)(1)] (October 13, 1976, Pub. L. No. 94-488, §8(a), 90 Stat. 2350); Title 31 U.S.C. §§1244(a),(b) [31 U.S.C.S. §1244(a) and (b)] (October 13, 1976, Pub. L.

No. 94-488, §7(b), 90 Stat. 2349); Title 42 U.S.C. §1981 (42 U.S.C.S. §1981) (May 31, 1870, ch. 114, §16, 16 Stat. 144); Title 42 U.S.C. §1983 (42 U.S.C.S. §1983) (April 20, 1871, ch. 22, §1, 17 Stat. 13); Title 42 U.S.C. §1988 (42 U.S.C.S. §1988) (October 19, 1976, Pub. L. No. 94-559, §2, 90 Stat. 2641); Title 42 U.S.C. §2000a (42 U.S.C.S. §2000a) (July 2, 1964, Pub. L. No. 88-352, Title II, §201, 78 Stat 243); Title 42 U.S.C. §2000d (42 U.S.C.S. §2000d) (July 2, 1964, Pub. L. No. 88-352, Title VI, §601, 78 Stat. 252).

## STATEMENT OF THE CASE AND OF THE FACTS

On August 9, 1978, Respondents filed their complaint (Appendix E) in the United States District Court for the Middle District of Florida, Ocala Division. The District Court's jurisdiction was

based upon 28 U.S.C. §§1331(a), 1343(3), and 1343(4).

Respondents' complaint sought to enforce Respondents' asserted rights under several statutes: 31 U.S.C. §§1242(a), 1244(a), and 1244(b); 42 U.S.C. §§1981, 1983, 1988, 2000a, and 2000d (Appendix H). The complaint alleged past racial discrimination by Petitioners, and requested declaratory relief, and injunctive relief against future discrimination. Additionally, the complaint requested affirmative monetary relief, i.e., court orders which would require Petitioners to place an amount of municipal funds in escrow, and would further require Petitioners to expend municipal funds and render municipal services in such a manner as to correct the effects of the alleged past discrimination.

On February 19, 1980, Petitioners filed their answer to Respondents' complaint. The answer contained a timely demand for trial by jury (Appendix F). However, on February 25, 1980, the District Court entered an order denying Petitioners' demand for jury trial (Appendix D).

On February 27, 1980, Petitioners filed a petition for writ of mandamus in the United States Court of Appeals for the Fifth Circuit, requesting that court to issue an order requiring the District Court to show cause why a jury trial should not be granted pursuant to Petitioners' demand (Appendix C). The Fifth Circuit Court of Appeals denied the petition for mandamus in an order dated March 24, 1980 (Appendix A), and a petition for rehearing of this order was denied on May 1, 1980 (Appendix B).

## REASONS FOR GRANTING THE WRIT

### I. THE COURT OF APPEAL'S DECISION IS IN CONFLICT WITH THE DECISIONS OF OTHER COURTS OF APPEALS ON THE SAME MATTER, AS WELL AS APPLICABLE DECISIONS OF THIS COURT REGARDING THE RIGHT TO TRIAL BY JURY.

The Fifth Circuit Court of Appeals' decision below (Appendix A) is in conflict with decisions of this Court, as well as those of other courts of appeals. Decisions by these courts have recognized that the constitutional right to jury trial applies in an action for monetary damages based upon an alleged violation of a plaintiff's rights created by Federal statute.

Respondents' complaint is based upon an alleged violation of their rights under several Federal statutes, one

of which is 42 U.S.C. §1983. At least two courts of appeals have held that an action for damages brought under this statute is in the nature of a tort action, so that the Seventh Amendment right to trial by jury is applicable. *Burt v. Abel*, 585 F.2d 613, 616 (4th Cir. 1978); *Patzig v. O'Neil*, 577 F.2d 841, 848 (3d Cir. 1978). Similarly, this Court has on several occasions recognized that a statutorily-based cause of action may be subject to the right of jury trial if the "statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law." *Curtis v. Loether*, 415 U.S. 189, 194 (1974).

Where such a "legal" issue is involved, the right to jury trial may not be lost by the mere fact that the issue is raised

in the context of a declaratory judgment action. *Simler v. Conner*, 372 U.S. 221, 223 (1963). In addition, the right to jury trial may not be defeated by the plaintiff's act of requesting injunctive relief in addition to its "legal" claim. *Curtis v. Loether*, 415 U.S. 189 (1974); *Dairy Queen v. Wood*, 369 U.S. 469 (1962); *Tights, Inc. v. Stanley*, 441 F.2d 336, 344 (4th Cir. 1971).

In *Curtis v. Loether*, 415 U.S. 189 (1974), this Court held that the right to jury trial applied in an action involving facts quite similar to those in the instant case. The plaintiff in that case sought injunctive and monetary relief for defendant's alleged refusal to rent an apartment to the plaintiff on the basis of plaintiff's race, in violation of the fair housing provisions of the Civil Rights Act of 1968. In

holding that the defendants were entitled to a jury trial, this Court noted that:

> A damage action under the statute sounds basically in tort - the statute merely creates a new legal duty, and authorizes the courts to compensate a plaintiff for the injury caused by the defendants' wrongful breach. [415 U.S. at 195].

Similarly, in the instant case, Respondents' cause of action is in the nature of a statutory "tort." The Respondents' entitlement to any relief is dependent upon a showing that Respondents' civil rights have been violated. This initial issue of liability is clearly a "legal" issue, which would be subject to jury trial if Respondents had requested traditional compensatory damages. *Curtis v. Loether*, 415 U.S. 189 (1974).

It is submitted that Respondents cannot avoid this "legal" issue by merely declining to request traditional compensatory damages. As this Court has stated:

> The Seventh Amendment question depends on the nature of the issue to be tried rather than the character of the overall action. [*Ross v. Bernhard*, 396 U.S. 531 (1970)].

It is clear that Respondents' prayer for the escrow of funds to be expended by the Petitioner City of Apopka in order to cure alleged violation of Respondents' civil rights, is essentially a claim for compensatory damages. As noted above, Respondents' entitlement to such relief is dependent upon proving a violation of Respondents' rights, and if such a showing is made, the end

result of the relief requested will be to compensate the Respondents for such violations. The manner in which the compensatory damage is awarded for the alleged breach of Respondents' rights is irrelevant. In this case, such an award could be effectuated through the disbursement of the funds in escrow. The sums may be awarded directly to the Respondents, or, as here requested, the trial court could order the Petitioners to expend a certain amount of funds in a particular manner so as to cure the alleged wrong. In either event, however, the result is to compensate Respondents for an alleged breach of their rights by Petitioners.

Furthermore, in order to determine the amount of money to be placed in escrow should Respondents prevail on

the merits, it will be necessary to take the testimony of engineers, architects, and other professionals in order to establish the cost of labor and materials necessary to place the respective facilities in parity with those in the allegedly "white" area. The court's finding with respect to such costs will represent the damage suffered by the black community. This issue is a basic issue of law that must be resolved by the trier of facts.

For the foregoing reasons, Petitioners submit that they are entitled to trial by jury on the issues of liability and damages. By denying Petitioners such a trial, the decision of the Fifth Circuit Court of Appeals comes into conflict with previous decisions of this Court and the other courts of appeals.

II. THE COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION REGARDING THE SCOPE OF THE SEVENTH AMENDMENT RIGHT TO JURY TRIAL, WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

It would be difficult to overemphasize the significance this Court has given to the Seventh Amendment right to jury trial. This Court has stated that "any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." *Dimick v. Scheidt*, 293 U.S. 474, 486 (1935). As evidenced by its reasoning and holdings this Court has in recent years not only been safeguarding the right to trial by jury, but has been expanding that right. *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959); *Dairy Queen v. Wood*, 369 U.S. 469 (1962); *Simler v. Conner*, 372

U.S. 221 (1963); *Ross v. Bernhard*, 396 U.S. 531 (1970); *Curtis v. Loether*, 415 U.S. 189 (1974). This trend toward a "strong federal policy" of favoring the right to trial by jury has not gone unnoticed by the courts of appeals. *Patzig v. O'Neil*, 577 F.2d 841, 848 (3d Cir. 1978), *Tights, Inc. v. Stanley*, 441 F.2d 336, 337 (4th Cir. 1971).

In view of the importance attached to the right of trial by jury, Petitioners respectfully submit that this Court should exercise this opportunity to render a definitive ruling upon the question of whether the right to jury trial is applicable to actions such as that in the case at bar. Such a ruling is greatly needed in light of the large number of class action suits against municipalities which have arisen

in recent years. Many of these suits have sought relief similar to that requested in the instant case. *See, Hawkins v. Town of Shaw*, 437 F.2d 1286 (5th Cir. 1971), *aff'd en banc*, 461 F.2d 1171 (5th Cir. 1972); *Johnson v. City of Arcadia, Florida*, 450 F. Supp. 1363 (M.D. Fla. 1978); Notice of Pendency of Other Actions (Appendix G).

In light of the increasing number of actions similar to the case at bar, and the lack of any ruling by this Court on the applicability of the Seventh Amendment to such cases, it is respectfully submitted that this Court should exercise its discretion to review the decision of the Court of Appeals in the instant case.

## CONCLUSION

For the foregoing reasons, a Writ of Certiorari should issue to review the opinions and orders of the Fifth Circuit Court of Appeals.

Respectfully submitted,

Johnie A. McLeod

Ralph M. McDermid
Of Counsel

## CERTIFICATE OF SERVICE

I, Johnie A. McLeod, hereby certify that on this 25th day of June, 1980, copies of the foregoing Petition for Writ of Certiorari were furnished by mail, correct postage prepaid, to David M. Lipman, Esq., 9500 S.W. 175th Terrace, Miami, Florida 33157, Attorney for

Respondents, and the the Honorable Charles R. Scott, United States District Court Judge, Middle District of Florida.

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# APPENDIX

## APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 80-5131

---

IN RE:

THE CITY OF APOPKA, FLORIDA, JOHN H. LAND, Mayor of Apopka, ALONZO WILLIAMS, JR., RICHARD MARK, BILL ARROWSMITH, JEANETTE ROBINSON, Councilmen of Apopka, Florida, their Successors and Agents, in their Individual and Official Capacities,

Petitioners.

---

On Petition for Writ of Mandamus to the United States District Court for the Middle District of Florida

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Before HILL, GARZA and THOMAS A. CLARK, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the petition for writ of mandamus is DENIED. No evidence has been brought to our attention suggesting that the District Court either failed to consider the relevant factors or clearly abused its discretion in ruling on petitioners' motion to transfer.

> [I]n the absence of a failure of the District Court to correctly construe and apply the statute, or to consider the relevant factors incident to ruling upon a motion to transfer, or unless it is necessary to correct a clear abuse of discretion, [this Court will] not entertain motions for Writs of Mandamus to direct District Courts to enter or vacate orders of transfer under §1404(a).

Ex parte Chas. Pfizer & Co., 225 F.2d 720, 723 (5th Cir. 1955). See also Garner v. Wolfinbarger, 433 F.2d 117, 120 (5th Cir. 1970).

In addition, "[t]here is no right to jury trial if viewed historically the issue would have been tried in the courts of equity or if otherwise it would have been tried without a jury." Wright & Miller, Federal Practice and Procedure: Civil §2302. Considering the issues raised by all of the pleadings, as we must, ibid., §2304, Beacon Theaters, Inc. v. Westover, 369 U.S. 500, 79 S. Ct. 948, 3 L. Ed 2d 988 (1959), we are of the opinion that the pleadings fail to state any issues which historically would have sounded in law rather than equity. The petition is therefore DENIED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 80-5131

---

IN RE:

THE CITY OF APOPKA, FLORIDA, ET AL.,

Petitioners.

---

Appeal from the United States District Court for the Middle District of Florida

---

Before HILL, GARZA and THOMAS A. CLARK, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the petition for rehearing of the Court's order of March 24, 1980, denying the petition for writ of mandamus is denied.

APPENDIX C

IN THE UNITED STATES
COURT OF APPEALS FOR
THE FIFTH CIRCUIT

The City of Apopka, Florida, John H. Land, Mayor of Apopka, Alonzo Williams, Jr., Richard Mark, Bill Arrowsmith, Jeanette Robinson, Councilmen of Apopka, Florida, their successors and agents, in their individual and official capacities,

Petitioners

/

NO. 80-5131

PETITION FOR WRIT of MANDAMUS

To the Honorable Charles R. Scott and United States Circuit Judges:

1) Petitioners pray that an order or orders be issued, directed to the said Honorable Charles R. Scott, Senior United States District Judge in the United States District Court, Middle District of Florida, Ocala Division, requiring him to show cause in this

Court, at a time to be designated, why he should not execute the mandate of this Court and vacate (a) order entered February 25, 1980, denying Petitioners' demand for a jury trial and (b) the order entered February 21, 1980, denying Petitioners' motion to transfer the case to the Orlando Division of the United States District Court, Middle District of Florida.

Statement of the Facts

2) In August, 1978, Plaintiffs Faithy Dowdell, Bobby Ann Barnes, Willie L. Nelson, Eddie Lee Wynn, Lafayette Dowdell, Johnnie H. Bridges, Freddie L. Howard, on behalf of themselves and all others similarly situated, filed their complaint in the United States District Court, Middle District of Florida, Ocala Division, alleging that they and Petitioners (some-

times referred to as the "Defendants") are residents of the City of Apopka, Orange County, Florida, and the black residential community has been unlawfully deprived of municipal services equal to the white residential community in paving and maintaining streets, provision of sewerage facilities, provision of water, provision of storm water drainage facilities, fire protection, street lighting and park and recreational facilities. For relief, Plaintiffs pray for an order (among other things) requiring defendants to place in an escrow account an amount of money to guarantee a fund from which the relief requested can be financed. (Complaint, Appendix A).

3) To determine the amount in dollars that the City must escrow to cover the

cost of bringing the foregoing services up to equality with those existing in the white community the testimony of engineers, architects and other professionals will be needed to express their opinion as to the cost of materials and services to place the respective facilities in parity with those in the white area. The Court's finding with respect to such costs will represent the damage suffered by the black community as a result of the alleged discrimination. The issue is a basic issue of law that must be resolved by the trier of the facts adduced at trial.

4) Johnson v. City of Arcadia, Florida, 450 F. Supp. 1363 (1978) is a case similar to the one at bar. The Court required the City of Arcadia to place in escrow $154,863 as good faith money to guarantee

the construction of certain facilities designated by the Court. There was no demand for a trial by jury in that case. A significant different remedy was fashioned in Hawkins v. Town of Shaw, 437 F. 2d 1286 (5th Cir. 1971), aff'd en banc 461 F. 2d 1171 (5th Cir. 1972). There, the Town was required to submit a Plan for the Court's approval showing how it proposed to cure the Court's finding of discrimination.

5) After the pretrial hearing the Court, on February 8, 1980, denied defendants' motion to dismiss the Complaint (Appendix B) and defendants thereafter, on February 19, 1980, filed their responsive answer to the Complaint in which they demanded a trial by jury (Appendix C). The case was set for trial on Monday, February 25, 1980. Defendants appeared ready for trial. Inasmuch as a jury was not

impaneled, counsel for defendants requested of the Court permission to be heardwith respect to their demand for trial by jury, which request was granted. The court entered an order on that day, February 25, 1980, denying defendants' demand for jury trial. (Appendix D). The trial started on that day but was continued to March 3, 1980.

6) It is important that this Court rule on the question of defendants' right to a trial by jury. Counsel for the plaintiffs in this case, Mr. David M. Lipman and Ms. Rosalind Gray have filed identical pending complaints on behalf of other named plaintiffs against the following small cities in the State of Florida: City of Leesburg, City of Eustis, City of Mulberry, City of Fort Meade, City of Tarpon Springs,

City of Brooksville and the City of Lake Wales. (Notice of Pendency of other actions - Appendix E). Since the filing of the "Notice of Pendency" other suits have been filed and remain pending. Our research has disclosed no judicial ruling on the right to a jury trial under the facts of the instant case and the foregoing cases pending in the State of Florida or elsewhere.

Statement of the Issue

7) The question of law is whether the District Court was in error in denying defendants a trial by jury.

Statement of Relief Requested

8) The relief requested with respect to the foregoing issue is stated in paragraph numbered "1" above.

APPENDIX D

UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, OCALA DIVISION

FAITHY DOWDELL, et al.,

Plaintiffs,

v. NO. 78-47-Civ-Oc

CITY OF APOPKA, et. al.,

Defendants.

---

O R D E R

In the answer filed by defendants on February 19, 1980, a timely demand for jury trial was made. Oral argument was heard on this issue immediately prior to commencement of the trial of this case on Monday, February 25, 1980. In open court and on the record, the Court denied defendants' request and enters this order for the convenience of the parties.

The right to trial by jury is governed by the Seventh Amendment to the United States Constitution. FED.R.CIV.P. 38(a). That right, however, does not extend to claims brought in equity. If any portion of the plaintiffs' complaint seeks relief at law, a demand for jury trial must be granted. Beacon Theaters, Inc. v. Westover, 359 U.S. 500 (1959). Historical characterization is the single most significant factor in determining whether a claim is legal or equitable in nature since the Seventh Amendment preserves the right to jury trials only "in suits at common law." However, also to be considered are the remedies made available by modern statutes and case law.

In the present case, plaintiffs seek declaratory and injunctive relief. As

an element of these remedies, plaintiffs would have the Court impose financial constraints on the future administration of defendants' municipal expenditures. In other words, plaintiffs would have defendants enjoined from future spending in the areas of the City of Apopka dominated by white residents until such time as the municipal services provided the black section of the city are brought up to a level equal in quality and quantity with those provided in the white section. Defendants contend that because monetary values and the prohibition of spending as well as mandatory expenditures are implicated, plaintiffs have raised issues which should be heard by a jury.

Plaintiffs' complaint is, in the opinion of the Court, fully equitable in nature. There is no claim for damages

arising out of past practices of discrimination. Plaintiffs seek injunctive relief against future disparate municipal spending. That such injunctive relief may involve a duty or obligation to spend funds in one manner or in one area as opposed to another does not transform the claim into one at law. In the brief research conducted by the Court on this particular principle, two cases decided by the Fifth Circuit Court of Appeals stand out. In Harkless v. Sweeny Independent School District, 427 F.2d 319 (5th Cir. 1970) it was held that a prayer for backpay, by black school teachers allegedly terminated in violation of their civil rights, was not a legal claim but was "an integral part of the equitable remedy of injunctive reinstatement." 427 F.2d at 324.

The court distinguished the mandate of the Beacon Theaters line of cases, saying:

> Each [of them] involved separate equitable and legal claims joined in the same case. The legal claims were for resolution by the jury. The backpay issue here was not a separate legal claim--rather it was part of the main equitable claim--reinstatement.

Harkless v. Sweeny Independent School District, 427 F.2d at 324. Moreover, the court specifically rejected the view that the Beacon Theaters trilogy "is a catalyst which suddenly converts any money request into a money claim triable by a jury." Harkless v. Sweeny Independent School District, 427 F.2d

at 324.

Additionally, in the per curiam opinion of the Fifth Circuit in United States v. Reddoch, 467 F.2d 807 (5th Cir. 1972), an action by the government to enjoin the racially-discriminatory operation of an apartment complex was determined to be an equitable suit, not one at common law, and thus there was no right to a jury trial.

In light of these authorities, and the type of relief sought by plaintiffs in this case, the Court concludes that defendants' demand for a jury trial should be denied.

Accordingly, it is now

ORDERED:

Defendants' demand for a jury trial is denied.

DONE and ORDERED at Ocala, Florida,

this 25th day of February, 1980.

/s/ Charles R. Scott

Senior United States
District Judge

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APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

FAITHY DOWDELL, JOHNNIE MAE SUBBS, BERNICE HENDERSON, BOBBY ANN BARNES, ADDIE SWAIN, MARY BOYKIN, MARY WATSON, WILLIE L. NELSON, EDDIE LEE WYNN, LAFAYETTE DOWDELL, JOHNNIE H. BRIDGES, FREDDIE L. HOWARD, on behalf of themselves and all others similarly situated,

PLAINTIFFS,

v. CIVIL ACTION NO.

THE CITY OF APOPKA, FLORIDA, JOHN H. LAND, Mayor of Apopka, ALONZO WILLIAMS, JR., RICHARD MARK, BILL AEROSMITH, JEANETTE ROBINSON, Councilmen of Apopka, Florida, their successors and agents, in their individual and official capacities, 78-47-Civ-Oc

DEFENDANTS.

# COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

## I. JURISDICTION

1. This is an action in equity authorized under 42 U.S.C. §§1981, 1983, 1988, and 2000(a) et seq. (Public Accomodations Act of 1964) with jurisdiction of this court invoked pursuant to 28 U.S.C. §§1331(a), 1343(3) and (4) which seeks injunctive relief against the deprivation of rights, privileges, and immunities secured and protected by the Fourteenth Amendment to the United States Constitution. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of ten thousand ($10,000.00) dollars. It is a proceeding for a preliminary and permanent injunction to restrain defendants from continuing their policy, practice, custom

and usage of providing municipal facilities and services on a racially discriminatory basis, and to require defendants to remedy the effects of their past policy and practice in this respect.

2. This action in equity is also authorized under 42 U.S.C. §2000(d) (Title VI of the Civil Rights Act of 1964) and 31 U.S.C. §1242 (State and Local Fiscal Assistance Act of 1972 as amended in 1976, hereinafter "Revenue Sharing Act") with jurisdiction of the Court invoked pursuant to 28 U.S.C. §1343(3) & (4), [in that it] seeks injunctive relief against the deprivation of rights and privileges, and immunities secured and protected by the Fourteenth Amendment to the United States Constitution and plaintiffs' statutory rights to equal benefits under the Revenue Sharing Act.

It is a proceeding for a preliminary and permanent injunction to restrain defendants from continuing their policy, practice, custom and usage of spending federal revenue sharing funds to finance specific municipal service construction and maintenance, which are the subject matter of this suit, in a racially discriminatory manner.

## II. PARTIES (CLASS ACTION ALLEGATION)

3. Plaintiffs are adult black citizens of the United States and of the State of Florida, residing in the defendant municipality, who suffer from the defendants' conduct complained of herein.

4. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on their own behalf and on behalf of all other black residents of the defendant municipality,

who are similarly situated and affected by the policy, practice, custom, and usage complained of herein. The members of the class on whose behalf plaintiffs sue are so numerous as to make it impractical to bring them all individually before the Court. There are common questions of law and fact involved, and plaintiff claims are typical of the claims of the entire class. A common relief is sought for plaintiffs and each member of the class. Plaintiffs fairly and adequately represent and will protect the interests of the class. Defendants have acted and refused to act on grounds generally applicable to plaintiffs' class. The question of law and fact common to the members of the class predominate over any questions affecting only individual members for the fair and efficient

adjudication of the controversy.

5. Defendants are the City of Apopka, Florida, organized and existing under the laws of the State of Florida, John H. Land, serving in his capacity as Mayor of Apopka, Florida, and Alonzo Williams, Jr., Richard Mark, Bill Aerosmith, Jeanette Robinson, Councilmen of the City of Apopka, Florida.

6. All said defendants herein described are responsible for recommending revenue sharing allocation for Apopka, Florida.

7. Each defendant, councilmen and mayor, are sued in both their official and individual capacities.

## III. STATEMENT OF FACTS OF DEFENDANTS' UNCONSTITUTIONAL PRACTICES

8. The defendants, acting under color of authority vested in them by the laws of the State of Florida, have

pursued and are presently pursuing a policy, practice, custom, and usage of racial discrimination in providing municipal facilities and services to the residents of the defendant municipality on the basis of race. See: Hawkins v. Town of Shaw, 437 F.2d 1286 (5th Cir. 1971), aff'd en banc 461 F.2d 1171 (5th Cir. 1972) and Johnson v. City of Arcadia (No. 76-13-CIV. Ft. M-K) (M.D. Fla.) (Memorandum of Decision, March 23, 1978). The black residential community has been and is thereby unlawfully deprived municipal services equal to the white residential community in, inter alia, the following services:

(a) paving and maintaining streets;

(b) provision of sewerage facilities;

(c) provision of water;

(d) provision of storm water drainage

facilities;

(e) fire protection;

(f) adequacy of street lighting;

(g) park and recreational facilities.

9. Defendants have allocated and spent federal revenue sharing funds to finance, maintain and construct the various municipal services as outlined in paragraph 7(a) - (g). These municipal services have been maintained and constructed in a racially discriminatory manner depriving plaintiffs of their rights served by the Revenue Sharing Act, 31 U.S.C. §1242, 42 U.S.C. §1981, 42 U.S.C. §1983, 42 U.S.C. §1988 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

## IV. RELIEF

10. Defendants' past and present

conduct deprives plaintiffs and the class they represent of the equal benefit of the facilities and services of the municipality in violation of the Fourteenth Amendment to the United States Constitution. Defendants' conduct deprives plaintiffs and their class of the equal right to convenience, health, and safety, on the basis of their race.

Defendants' conduct irreparably injures plaintiffs and their class and will continue to irreparably injure them unless enjoined by this Court. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs respectfully pray that this Court advance this cause on the docket and order a speedy hearing of this action, and after such hearing enter an order enjoining defendants as follows:

A. Equalization of Municipal Services Relief

1. To refrain from discriminating against plaintiffs in providing any and all municipal facilities and services, and forthwith to remedy the effects of past discrimination in the providing of such facilities and benefits;

2. To pave the streets of the black residential community with a quality of materials and workmanship comparable to those employed in paving the streets of the white residential community.

3. To construct and install fire hydrants, street lights, storm water drainage devices, sewerage and water facilities in the black residential community so as to give their residents the equal benefits of such facilities as [are] afforded the white residential

community.

4. To construct parks and recreational facilities in the black residential community so as to give their residents the equal benefits of such facilities as [are] afforded the white residential community.

5. From expending any funds for the improvement or maintenance of any municipal services or facilities furnished the residents of the white residential community until the facilities and services furnished the residents of the black residential community have been brought up to substantially the level now enjoyed by white residents.

6. Issue a declaratory judgment that the practices of defendants with respect to providing municipal services as set forth above are violative of

the rights of the plaintiffs as secured by 42 U.S.C. §1981, 42 U.S.C. §1983, 42 U.S.C. §2000(a) et seq. and the Fourteenth Amendment of the Constitution of the United States.

7. To grant plaintiffs their costs and a reasonable award of attorneys' fees herein pursuant to the Civil Rights Attorney's Fees Act of 1976, and to grant such alternative and additional relief as appears to the Court to be equitable and just.

B. Revenue Sharing Relief

1. Order defendants to place in an escrow account an amount of money equal to the revenue sharing money previously received by the municipality, any amount of revenue sharing funds currently on hand, and any amounts received in the future, in order to guarantee

that the violations of constitutional and statutory rights are not perpetuated by federal monies and in order to preserve a fund from which the relief requested can be financed.

2. Issue a declaratory judgment that the practices and conditions of the defendants with respect to the allocation and spending of revenue sharing funds as set forth above are violative of the rights of the plaintiffs as secured by 31 U.S.C. §1242, 42 U.S.C. §1981, 42 U.S.C. §1983, and 42 U.S.C. §2000(d), and the Fourteenth Amendment to the Constitution of the United States.

3. Grant plaintiffs their costs and a reasonable award of attorneys' fees herein pursuant to 31 U.S.C. §1244(e) and to grant such alternative and additional relief as appears to the Court

to be equitable and just.

Respectfully submitted,

/s/ David M. Lipman

DAVID M. LIPMAN (Trial Counsel)
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ATTORNEYS FOR PLAINTIFFS

DATED: August 9, 1978

APPENDIX F

UNITED STATES DISTRIT COURT, MIDDLE DISTRICT OF FLORIDA, OCALA DIVISION

FAITHY DOWDELL, et al.,

Plaintiffs,

vs. NO. 78-47-Civ-Oc

CITY OF APOPKA, FLORIDA, et al., DEMAND FOR JURY TRIAL

Defendants.

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DEFENDANTS' ANSWER TO COMPLAINT

Defendants, answering the Complaint:

First Defense

1. Admit the allegations contained in paragraphs numbered "5" and "7" of the Complaint; allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered "3" of the Complaint; and deny each and every other allegation contained

in the Complaint.

* * *

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

MRS. JOHNNIE SNEED, et. al.,

Plaintiffs,

CIVIL ACTION NO. 78-46-CIV-OC

vs.

CITY OF LEESBURG, FLORIDA, et. al.,

Defendants.

FAITHY DOWDELL, et. al.,

Plaintiffs,

CIVIL ACTION NO. 78-47-CIV-OC

vs.

CITY OF APOPKA, FLORIDA, et. al.,

Defendants.

SAMUEL B. GASKIN, et. al.,

Plaintiffs,

CIVIL ACTION NO. 78-48-CIV-OC

vs.

CITY OF EUSTIS, FLORIDA, et. al.,

Defendants.

NOTICE OF PENDENCY OF OTHER ACTIONS

Plaintiffs, by their counsel, hereby give "Notice of Pendency of Other Actions" pursuant to Rule 1.04(b)(c) of the United States District Court, Middle District of Florida. Counsel states as follows:

1. INTRODUCTION

In the above three styled and numbered lawsuits, plaintiffs -- consisting of a class of all black citizens in each respective municipality -- have filed complaints based upon Johnson v. City of Arcadia, 450 F. Supp. 1363 (M.D. Fla. 1978) and Hawkins v. Town of Shaw, 437 F.2d 1286 (1971) aff'd en banc, 461 F.2d 1171 (5th Circuit 1972) seeking an end to the provision of municipal facilities and services on a racially discriminatory basis. The suits seek

that defendants be required to remedy the effects of their past policies and practices by ameliorating the disparity of certain city provided services.

The complaints challenge racial discrimination in various services which include, inter alia:

(a) paving and maintinaing streets;

(b) construction and maintenance of storm water drainage systems;

(c) placement and maintenance of fire hydrants and proper fire protection;

(d) placement and qulaity of street lights;

(e) provision of sewerage facilities;

(f) provision of water systems; and

(g) improvement of park and recreational facilities and services.

Plaintiffs seek that these municipal

services in the black residential neighborhoods be provided in the same number and quality equivalent to those in the white residential communities of each particular city.

In addition to the elimination of racial disparity in specific municipal services, plaintiffs also seek injunctive relief to end discriminatory financing of municipal services through the utilization of federal funds and specifically under the State and Local Fiscal Assistance Act of 1972 (herein "Revenue Sharing Act") 31 U.S.C. §1221 et. seq. as amended 1976 and under 42 U.S.C. §2000(d) (Title VI of the Civil Rights Act of 1964). Defendants practices described in plaintiffs' complaints are in violation of the Revenue Sharing Act's strict prohibition of discrimination on the basis

of race [in] any activity funded in whole or in part by revenue sharing funds. 30 U.S.C. §1242. Moreover, defendants are in noncompliance with the Department of Treasury regulations promulgated under the Act. 31 C.F.R. §51.52, as amended 40 Fed. Reg. 50029 (1975).

Plaintiffs in addition allege that not only are defendants in noncompliance with the Revenue Sharing Act, but the discriminatory use of federal funds also violates plaintiffs' statutory rights under Title VI of the Civil Rigths Act of 1964, 42 U.S.C. §2000(d), not to be discriminated against in the expenditure of federal tax dollars. See, Lau v. Nichols, 414 U.S. 563 (1974).

2. PLAINTIFFS SEEK COMMON RELIEF

Plaintiffs in all the cases seek

to enjoin the expenditure of both municipal funds, as well as federal funds, for the improvement or maintenance of any municipal services or facilities furnished to residents of the white residential community until the facilities and services of the black residential neighborhood have been brought up to substantially the level now enjoyed by white residents. Secondly, plaintiffs seek to escrow an amount of money equal to the revenue sharing money previously received by each of the municipalities, and any amounts received in the future, in order to guarantee that the violations of constitutional and statutory rights are not perpetuated by federal monies and in order to preserve a fund for which the relief requested can be financed. Thus, plaintiffs seek a

pool of funds to help effectuate expensive relief in these cases.

3. COMMON QUESTIONS OF LAW AND FACT

Each of the three above styled and numbered cases are identical in terms of questions of law which they present. Additionally, they present common questions of fact to the extent that they relate to the quality and quantity of certain basic municipally provided services. Each case also involves factual questions relating to the disbursement and expenditure of local, state and federal funds in providing those services.

4. CURRENT PROCEDURAL POSTURE OF SIMILAR CASES

All the styled and numbered cases listed above, i.e., Sneed v. City of

Leesburg;[1] Dowdell v. City of Apopka, and Gaskin v. City of Eustis, Florida, were all filed simultaneously on August 9, 1978. Additionally, extensive pre-trial discovery pleadings including sets of requests for admissions of fact, interrogatories, and motions for production inspection were filed in each of these cases.

A. ARCADIA AND FORT MYERS

Hinton Johnson v. City of Arcadia, 450 F. Supp. 1363 (M.D. Fla. 1978), (herein Arcadia) was initiated on February 25, 1976, as a companion case with Gloristeen Harris, et. al. v. City of Fort Myers, Florida, et.al., No. 76-13-Civ. Ft. M-K (N.D. Fla.). On April 11, 1977, trial commenced in

1/ No Requests for Admissions were filed in the Leesburg litigation.

the Arcadia case. This court, per Judge Ben Krentzman, heard testimony over a two-day period relating to plaintiffs' claims of racial discrimination in provision of certain municipal services in the City of Arcadia. On April 12, 1977, this court in its bench opinion found the defendants had historically and presently perpetrated racial discrimination against plaintiffs with regard to the following municipal services:

(a) distribution of water facilities;

(b) street paving;

(d) park and recreational facilities.

In holding that the defendants discriminated against plaintiffs, this court enjoined defendants indefinitely from spending approximately $415,000 of revenue sharing funds which it had on hand. The decision is reported at

450 F. Supp. 1363.

In Harris v. City of Fort Myers, this court in its order of April 12, 1977 has entered final order (per Judge Krentzman), relating both to (a) liability and (b) relief.

B. MULBERRY, FORT MEADE, TARPON SPRINGS, BROOKSVILLE, AND LAKE WALES

Th following five cases, all presenting similar legal issues and factual questions which are sui generis to each municipality, are currently in litigation in the Middle District of Florida:

a. Napier v. City of Mulberry
No. 77-1067-CIV-T-K

b. King v. City of Fort Meade
No. 77-1066-CIV-T-K

c. Fields vs. City of Tarpon Springs
No. 77-1063-CIV-T-K

d. NAACP of Brooksville v. City of Brooksville
No. 77-1064-CIV-T-K

e. Austin v. City of Lake Wales
No. 77-1065-CIV-T-H

5. Plaintiffs in each of the three cases are represented by the same counsel.

WHEREFORE for premises considered and pursuant to counsel's continuing obligation and duty under Local Rule 1.04, counsel submit their "Notice of Pendency of Other Actions."

Respectfully Submitted,

/s/ David M. Lipman

DAVID M. LIPMAN
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Washington, D.C. 20036

MICHAEL MASINTER, ESQ.
Nova University School of Law
College Avenue
Fort Lauderdale, FL 33314

ATTORNEYS FOR PLAINTIFFS

DATED: August 23, 1978

CERTIFICATE OF SERVICES

I, David M. Lipman, do hereby certify that I have this day mailed by United States Mail, postage prepaid, a true and exact copy of the foregoing "Notice Of Pendency of Other Actions" to the following party defendants:

Jack Seller
Mayor
City Hall
Leesburg, Florida

Jack Bradley
Commissioner
City Hall
Leesburg, Florida

Burton Brown
Commissioner
City Hall
Leesburg, Florida

Edwin H. Merrell
Commissioner
City Hall
Leesburg, Florida

Charles C. Strickland
Commissioner
City Hall
Leesburg, Florida

John H. Land
Mayor
City of Apopka
City Hall
Apopka, Florida

Alonza Williams, Jr.
Councilman
City of Apopka
City Hall
Apopka, Florida

Richard Mark
Councilman
City of Apopka
City Hall
Apopka, Florida

Bill Aerosmith [sic]
Councilman
City of Apopka
City Hall
Apopka, Florida

Jeanette Robinson
Councilman
City of Apopka
City Hall
Apopka, Florida

H. W. Dandridge
Mayor
City of Eustis
City Hall
Eustis, Florida

N. E. Hurley
Vice Mayor
City of Eustis
City Hall
Eustis, Florida

S. T. E. Pinkney
Commissioner
City of Eustis
City Hall
Eustis, Florida

G. H. Massey
Commissioner
City of Eustis
City Hall
Eustis, Florida

Homer E. Royals
Commissioner
City of Eustis
City Hall
Eustis, Florida

/s/ David M. Lipman
DAVID M. LIPMAN

DATED August 23, 1978

## APPENDIX H

### Text of Relevant Constitutional and Statutory Provisions:

1. United States Constitution, Amendment VII:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

2. 31 U.S.C. §1242(a)(1). (31 U.S.C.S. §1242(a)(4)) (October 13, 1976, Pub. L. No. 94-488, §8(a), 90 Stat. 2350)

> (a) Prohibition. (1) In general. No person in the United States shall, on the ground of race, color, national

origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a State government or unit of local government, which government or unit receives funds made available under subtitle A. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 [29 USCS §794] shall also apply to any such program or activity. Any prohibition against discrimination on the basis of religion, or any exemption from such prohibition,

as provided in the Civil Rights Act of 1964 or title VIII of the Act of April 11, 1968, hereafter referred to as Civil Rights Act of 1968, shall also apply to any such program or activity.

3. 31 U.S.C. §1244(a) (31 U.S.C.S. §1244(a)) (October 13, 1976, Pub. L. No. 94-488, §7(b), 90 Stat. 2349).

(a) Standing. Whenever a State government or a unit of local government, or any officer or employee thereof acting in an official capacity, has engaged in any act or practice prohibited by this Act upon exhaustion of administrative remedies, a civil action may be instituted by the person aggrieved in an appropriate

United States district court or in a State court of general jurisdiction.

4. 42 U.S.C. §1981 (42 U.S.C.S. §1981 (May 31, 1870, ch. 114, §16, 16 Stat. 144)

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

5. 42 U.S.C. §1983 (42 U.S.C.S. §1983) (April 20, 1871, ch. 22, §1, 17 Stat. 13).

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

6. 42 U.S.C. §1988 (42 U.S.C.S. §1988) (October 19, 1976, Pub. L. No. 94-559, §2, 90 Stat. 2641).

§1988. Proceedings in vindication of civil rights

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause

is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes [42 USCS §§ 1981-1983, 1985, 1986], title IX of Public Law 92-318 [20 USCS §§ 1681 et seq.], or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code

[26 USCS §§ 1 et seq.], or title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs. (R. S. § 722; Oct. 19, 1976, P. L. 94-559, § 2, 90 Stat. 2641.)

7. 42 U.S.C. §2000a (42 U.S.C.S. §2000a) (July 2, 1964, Pub. L. No. 88-352, Title II, §201, 78 Stat. 243).

§2000a. Right to full and equal enjoyment of places of public accomodation

(a) Equal access. All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges,

advantages, and accomodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

(b) Place of public accommodation. Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title [42 USCS §§ 2000a-2000a-6] if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire

and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which

is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

(c) Operations affecting commerce; definition of "commerce". The operations of an establishment affect commerce within the meaning of this title [42 USCS §§ 2000a-2000a-6] if (1) it is one of the establishments described in paragraph (1) of subsection (b); (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of

subsection (b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located within the premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia,

or between points in the same State but through any other State or the District of Columbia or a foreign country.

(d) Discrimination or segregation supported by State action. Discrimination or segregation by an establishment is supported by State action within the meaning of this title [42 USCS §§ 2000a-2000a-6] if such discrimination or segregation (1) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

(e) Private establishments. The provisions of this title [42 USCS §2000a-2000a-6] shall not apply to

a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b).

8. 42 U.S.C. §2000d (42 U.S.C.S. §2000d) (July 2, 1964, Pub. L. No. 88-352, Title VI, §601, 78 Stat. 252)

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

79-2051

Supreme Court, U. S.
FILED
JUL 28 1980
MICHAEL RODAK, JR., CLERK

# In The Supreme Court of the United States

**OCTOBER TERM, 1979**

**NO. 79-2051**

THE CITY OF APOPKA, FLORIDA, JOHN H. LAND, Mayor of Apopka, ALONZO WILLIAMS, JR., RICHARD MARK, BILL ARROWSMITH, JEANETTE ROBINSON, Councilmen of Apopka, Florida, their successors and agents, in their individual and official capacities,

*Petitioners,*

*vs.*

FAITHY DOWDELL, JOHNNIE MAE SUBBS, BERNICE HENDERSON, BOBBY ANN BARNES, ADDIE SWAIN, MARY BOYKIN, MARY WATSON, WILLIE L. NELSON, EDDIE LEE WYNN, LAFAYETTE DOWDELL, JOHNNIE H. BRIDGES, FREDDIE L. HOWARD, on behalf of themselves and all others similarly situated,

*Respondents.*

## BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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In The

# Supreme Court

of the

# United States

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**OCTOBER TERM, 1979**

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**NO. 79-2051**

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THE CITY OF APOPKA, FLORIDA, JOHN H. LAND, Mayor of Apopka, ALONZO WILLIAMS, JR., RICHARD MARK, BILL ARROWSMITH, JEANETTE ROBINSON, Councilmen of Apopka, Florida, their successors and agents, in their individual and official capacities,

*Petitioners,*

*vs.*

FAITHY DOWDELL, JOHNNIE MAE SUBBS, BERNICE HENDERSON, BOBBY ANN BARNES, ADDIE SWAIN, MARY BOYKIN, MARY WATSON, WILLIE L. NELSON, EDDIE LEE WYNN, LAFAYETTE DOWDELL, JOHNNIE H. BRIDGES, FREDDIE L. HOWARD, on behalf of themselves and all others similarly situated,

*Respondents.*

---

**BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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## SUMMARY OF ARGUMENT

Widespread ranging affirmative injunctive relief, having the effect of imposing monetary costs on governmental parties to correct systemic deprivations may impose considerable costs on the governmental units, yet requests for such relief do not transform such action into law.

## STATEMENT OF CASE

Patterned after *Hawkins v. Town of Shaw*, 437 F.2d 1286 (5th Cir. 1971), *aff'd en banc* 461 F.2d 1171 (5th Cir. 1972) and *Johnson v. City of Arcadia,* 450 F.Supp. 1383 (M.D. Fla. 1978) Respondents (Plaintiffs) a class of black citizens of Apopka, Florida, initiated this civil rights action pursuant to 42 U.S.C. §1983, *et. seq*, on August 8, 1978. The Complaint[1] charged that the City of Apopka, its Mayor and Councilmen, deprived black citizens of equal municipal services and sought that qualitative and quantitative disparities between various municipal services provided to black and white citizens be eliminated.

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[1]The Complaint challenged racial discrimination in the following services:

a) Paving and maintaining streets;
b) Provision of sewerage facilities;
c) Provision of water;
d) Provision of storm water drainage facilities;
e) Fire protection;
f) Adequacy of street lighting;
g) Park and recreational facilities.

This action was also authorized under 42 U.S.C. §2000(d) (Title VI of the Civil Rights Act of 1964), and 31 U.S.C. §1242 (State and Local Fiscal Assistance Act of 1972, hereinafter "Revenue Sharing Act"). As such, the action additionally sought to enjoin the City of Apopka and its public officers from expending federal funds in a racially discriminatory manner. *See, e.g., United States v. Chicago,* 395 F.Supp. 329 (N.D. Ill. 1975), 405 F.Supp. 480 (N.D. Ill. 1975), 411 F.Supp. 218 (N.D. Ill. 1976), *aff'd* 549 F.2d 415 (7th Cir. 1977).

Respondents have requested specific injunctive action to eliminate past and current racial discrimination by requesting the trial court to implement a capital improvement project in the black residential neighborhood in order to bring municipally provided services to the same qualitative and quantitative level as those enjoyed by white residents. Moreover, to insure an adequate source of money to finance these improvements, Respondents have sought: a) an escrow of all federal revenue sharing funds on hand and to be received in the future by the City of Apopka, Florida and b) an injunction prohibiting any major capital improvement projects in the white residential area of Apopka until services have been equalized in the black residential area.

## ARGUMENT

### AFFIRMATIVE INJUNCTIVE RELIEF WHICH IMPOSES MONETARY COSTS DOES NOT TRANSFORM AN ACTION INTO LAW.

Petitioners' argument, when reduced to its core, is simply that the right to a jury trial is insured whenever a litigant seeks relief which involves mandatory expenditures, since such remedy is essentially a damage award. We believe, as did the trial court (Order of February 25, 1980) (A. 12-18 "Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit" (herein "Petition")) and the Fifth Circuit Court of Appeals (Order of March 24, 1980) (A. 1-3 "Petition") and (Order of May 1, 1980) (A. 4 "Petition") that petitioners are incorrect in this analysis.

Of critical significance, Respondents eschewed an attempt to obtain an award of monetary damages for Petitioners' past unconstitutional practices. *See e.g. Carey v. Pipus,* 435 U.S. 247 (1978) (Damages designed to compensate persons for injuries caused by deprivation of constitutional and statutory rights under 42 U.S.C. §1983) and *Monell v. Dept. of Social Services of the City of New York,* 436 U.S. 658 (1978), (Award of damages for constitutional violations of municipalities). No City *monies* are requested to be paid *to* the injured Respondents. Rather, we seek only the classical and fundamental *equitable* relief — that the City make its black community "whole" by providing municipal services equal to those enjoyed by the white residents of Apopka.

Under Petitioners view of this case, they would require that whenever a Federal Chancellor is requested to implement an equitable remedy which may necessitate the expenditure of monies, the convening of a jury is necessary, as such an action is based in law

rather than equity.[2] Such a conclusion is not only unsupported by the facts and legal theory of this case, but more fundamentally, by §1983-Civil Rights Jurisprudence. *Harkless v. Sweeny Independent School District,* 427 F.2d 319, 324 (5th Cir. 1970), *cert. den.* 400 U.S. 991 (1972).[3] (This Circuit has rejected the view "* * * that the trio of *Beacon Theatres, Dairy Queen* and *Thermo-Stitch* is a catalyst which suddenly converts *any* money request into a claim triable by jury.")

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[2]This distinction — legal or equitable — is of course, critical since the Seventh Amendment guarantees the right to a jury trial in all actions at common *law* where the amount in controversy exceeds twenty dollars. *Curtis v. Loether,* 415 U.S. 189 (1974). There is no requirement that a jury try equitable issues. *Dairy Queen v. Wood,* 369 U.S. 469 (1962).

[3]*Harkless* is one in a series of Circuit decisions which have held that there is no right to trial by jury in actions for back pay and injunctive relief. *See, e.g., Slack v. Havens,* 522 F.2d 1091, 1094 (9th Cir. 1975); *EEOC v. Detroit Edison Co.,* 515 F.2d 301, 308 (6th Cir. 1975), *vacated and remanded on other grounds,* 431 U.S. 951, (1977); *Robinson v. Lorillard Corp.,* 444 F.2d 791, 802 (4th Cir. 1971), *cert. dismissed,* 404 U.S. 1006 (1971); *King v. Laborers Int. Union,* 443 F.2d 273, 279 (6th Cir. 1971) (dicta); and *Johnson v. Georgia Highway Express, Inc.,* 417 F.2d 1122, 1125 (5th Cir. 1969).

There is no functional difference between back pay awards in *Harkless* and escrowed funds used for improvements for municipal services in this case. Each is ". . . an integral part of the *equitable* remedy of injunctive reinstatement." *Harkless,* 427 F.Supp. at 329. Indeed, *Dowdell* presents a case that is even more remote from a remedy of *damages* than *Harkless,* for in *Dowdell,* plaintiffs are not personally receiving any monies from remedial action that the District Court may mandate. Rather, money is to be allocated for service improvements. Unlike *Harkless,* no funds will be paid to plaintiffs' individual pocketbooks.

This Court has never required, nor would the Seventh Amendment comprehend, the convening of a jury in an equitable action solely because relief imposes monetary costs.

## CONCLUSIONS

For the foregoing reasons, and consistent with the trial court and Fifth Circuit Orders, a Writ of Certiorari should not be issued.

Respectfully submitted,

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